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Security
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OGC HAS REVIEWED.

NS-0887

31 January 1956

MEMORANDUM FOR: Deputy Director (Support)

SUBJECT : Security Problems with AEC

1. This Office, together with the Security Office, have been seeking a way to avoid duplication of security investigations for Agency personnel who must have access to Restricted Data. As you may recall, § 145(b) of the Atomic Energy Act of 1954 gives the Commission or the General Manager authority to waive a security investigation when it is "clearly consistent with the national interest". Since our minimal security requirements equal or exceed those established under their Act, we think there is ample margin for the use of such discretion. Their General Counsel, however, does not agree. This authority has apparently been used only for specific individuals and they do not feel it applies to a class of persons. They base this opinion on the fact that their Act (§ 143) authorizes Department of Defense (DOD) personnel to have access to Restricted Data without investigation, but makes no mention of other departments of the Government. Without an interpretation from the Attorney General, their General Counsel would not be willing to advise the Commission or the General Manager that there is authority under § 145(b) to do as we suggest. However, their General Counsel is reluctant to request an opinion since the Attorney General has declined to act a number of times in the past on other matters on the basis that the AEC is not an executive department of the Government under Title 5 of the U.S. Code. (Attachment A was prepared by us for AEC submission.) While we feel it is more appropriate for the question to come from AEC, we have prepared an alternative request originating from this Agency (Attachment B). There is no reason, of course, to believe that the Attorney General would be more receptive to a request from us. We are not an executive department of the Government either and the authority in question belongs to AEC and not to us.

2. A related problem occurs in the relationship between DOD personnel who have access to Restricted Data under the statutory provision of § 143 of their Act (without clearance) and our personnel who have the Que clearance. By the present AEC position, communication of Restricted Data between these two classes is not permissible. As the AD/SI has pointed out, this results

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in the anomaly of a member of the Estimates Board eliminating Restricted Data from his presentation because members of the audience could not receive the information from him although they were entitled to it from the AEC. Similarly, in the case of an Army JAEIC member who did not have a Quc clearance, a violation was inevitable at every meeting he attended. Or, where DOD personnel detailed to us received a Quc clearance which was revoked on their departure, they could not continue to work with Agency personnel. Trans-classification under §§ 142(d) and (e) of the Act are helpful for military utilization of atomic weapons and the atomic energy programs of other nations through the joint determination of DOD and this Agency respectively, but it does not cover the full ambit. Again, we believe that there is sufficient authority under § 145(b) of their Act to correct this confusion. Their General Counsel again does not concur in our interpretation and this may be an additional matter to refer to the Attorney General, although the Security Office would prefer it to be kept separate from the question in paragraph 1 above. In one recent instance, the problem was satisfactorily arranged between the security representatives of the Agency and the Commission.

3. The Security Office feels that further discussion with AEC on the duplication of investigations, in the absence of a favorable opinion from the Attorney General, is feckless, and believes we should request it directly. (This will be equally true for the problem with DOD personnel if we find that our working relationship continues to be hampered.) If the Attorney General falls back on his strict statutory obligations and declines to give an opinion, an approach could conceivably be made through the White House. Without a favorable opinion from the Attorney General, amendment of the Atomic Energy Act itself is the apparent alternative.

4. a. In the matter of duplication of investigation, we recommend that: the Security Office and this Office informally determine whether the Attorney General will provide an opinion and if he is agreeable, that we prepare and forward the submission after obtaining the comments of AEC; and if the Attorney General either declines to give an opinion or it proves unfavorable, that the Agency propose suitable changes in the Atomic Energy Act.

b. In the matter of exchange of information between DOD and Agency personnel, we recommend that the question not be presented to the Attorney General until a failure of further efforts

to solve it informally with AUC proves that there is no alternative, but if such failure occurs, that we act in a fashion similar to that recommended for the duplication of investigations.

5. We shall be pleased to take whatever further action you may decide is desirable in either or both of these matters.

SIGNED

Assistant General Counsel

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The recommendation in paragraph 4.a. is approved (disapproved).

The recommendation in paragraph 4.b. is approved (~~disapproved~~).

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MAR 16 1956

L.M. WHITE
Deputy Director
(Support)

3 Attachments

cc: 1 - DD/I
1 - EO-DD/P
1 - DD/Security
1 - SSA/DDS

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